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OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
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Washington, DC 20557

Re: Written Ex Parte Communication: Request of Lockheed Martin Corporation and Warburg, Pincus & Co. For Review of the Transfer of the Lockheed Martin Communications Industry Services Business From Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File No. 98-151

Dear Ms. Salas:

This Ex Parte letter responds to the Reply Comments of Mitretek Systems (Mitretek) filed in this docket on September 17, 1999.<sup>1</sup>

Mitretek - an unsuccessful applicant for the role of North American Numbering Plan Administrator ("NANPA") - continues to be the sole opponent of the proposed transfer of the Lockheed Martin Communication Industry Services ("CIS") business to NeuStar, Inc. ("NeuStar").<sup>2</sup> While styled as "reply comments," the Mitretek filing does

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<sup>1</sup> Reply Comments of Mitretek Systems in Response to Public Notice DA 99-1647 (Sept. 17, 1999) ("Mitretek Reply").

<sup>2</sup> Lockheed, Martin Corporation ("Lockheed Martin") and Warburg Pincus & Co. ("Warburg Pincus") first requested approval of the proposed transfer in December, 1998. Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Services Business, NSD File No. 98-151 (Dec. 21, 1998) ("Original Request"). Lockheed Martin and Warburg Pincus also have filed an Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151 (Aug. 16, 1999) ("Amended Request") and a Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151

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not reply to any of the other comments in this proceeding, which unanimously and unambiguously endorsed prompt Commission action to allow the transfer of CIS from Lockheed Martin to NeuStar. Rather, Mitretek raises issues not addressed at all in the comments and repeats its insubstantial and inaccurate claims regarding control of NeuStar following the proposed transaction. Mitretek offers nothing new to support its opposition except an irrelevant claim that Warburg, Pincus & Co. ("Warburg Pincus") - an entity that does not propose to be involved in numbering plan administration - lacks the expertise required to perform that task. In the interest of expediting the disposition of a request that has been long pending, this letter responds to Mitretek's new argument and briefly addresses the other claims made in Mitretek's Reply Comments.

## **I. The Expertise And Resources Needed To Administer The North American Numbering Plan And Nationwide Number Portability Will Be Transferred Intact To NeuStar**

Mitretek argues that the Request must be denied because Warburg Pincus has made "no representation as to its comprehension, much less expertise, to implement the North American Numbering Plan in an efficient and effective way."<sup>3</sup> Mitretek's argument simply ignores the record in this proceeding. As Lockheed Martin and Warburg Pincus (the "Parties") repeatedly have made clear, the Parties propose to transfer intact to NeuStar all of the resources and expertise of CIS, which will continue to bring those resources and expertise to bear on its responsibilities as North American Numbering Plan Administrator ("NANPA") and the Local Number Portability Administrator ("LNPA") for the seven U.S. regions and Canada. Warburg Pincus's relationship with CIS is that of a strategic investor. As such, Warburg Pincus will have no involvement in the day to day operations of NeuStar.

In fact, Warburg Pincus's numbering expertise is no more relevant here than the numbering expertise of any Lockheed Martin entity (other than CIS) was to the Commission's decision to assign NANPA responsibilities to Lockheed Martin. In this proceeding, as in that earlier decision, the essential specialized capabilities and resources need only reside with the entity that will perform the NANPA function, in this case with NeuStar. Mitretek presents a phantom issue that should have no bearing on the Commission's decision in this proceeding.

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(Aug. 26, 1999) ("Supplemental Amended Request"). This letter refers to the Original Request, the Amended Request and the Supplemental Amended Request collectively as the "Request."

<sup>3</sup> Mitretek Reply at 9.

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## II. Lockheed Martin Has Not Defaulted On Its Obligation To Remain Neutral

In its Reply Comments, Mitretek continues to assert that Lockheed Martin has been in violation of NANPA neutrality requirements since the announcement of the COMSAT acquisition, (or even earlier) and insists that the Commission must respond to this "default" by appointing Mitretek as the new NANPA.<sup>4</sup> There is no basis for either of these claims.

Mitretek begins with the false premise that there is some agreement that a default has occurred.<sup>5</sup> Of course, no party except Mitretek ever has argued that Lockheed Martin is in default. More important, Lockheed Martin has shown in its previous filings that it has remained in compliance with the Commission's neutrality requirements and that neither discussions regarding a potential transaction, nor announcement of a proposed transaction constitutes a violation of neutrality. Thus, it is no surprise that Mitretek cites no authority for its argument that an acquisition can violate the NANPA neutrality requirement before that transaction has been consummated.<sup>6</sup>

Moreover, Lockheed Martin has remained committed to maintain neutrality so long as it controls CIS. To address any neutrality issue following the consummation of the COMSAT acquisition,<sup>7</sup> Lockheed Martin has adopted a Code of Conduct that will ensure the NANPA's neutrality during the interim between consummation of the Lockheed Martin COMSAT transaction and consummation of the sale of CIS to NeuStar.<sup>8</sup> Accordingly, no default of CIS's obligation to remain neutral in its

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<sup>4</sup> *Id.* at 4-9.

<sup>5</sup> *Id.* at 5-6.

<sup>6</sup> *Id.* at 6.

<sup>7</sup> *Lockheed Martin Corporation/Regulus, LLC, Application for Authority to Purchase and Hold Shares of Stock in COMSAT Corporation*, File No. SAT-ISP-19981016-00072 (Memorandum, Order and Authorization rel. Sept. 15, 1999).

<sup>8</sup> See Code of Conduct, appended to Letter of J. G. Harrington, Counsel to Lockheed Martin, to Magalie Roman Salas, Secretary, FCC, September 16, 1999. As Lockheed Martin recently advised the Commission, Lockheed Martin and CIS have taken all steps necessary to implement the Code of Conduct. See Written Ex Parte Communications from J. G. Harrington, Counsel, Lockheed Martin Corporation, *Request of Lockheed Martin Corporation and Warburg, Pincus & Co. For Review of the Transfer of the Lockheed Martin Communications Industry Services Business From Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co.*, CC Docket No. 92-237, NSD File No. 98-151 (Sept. 22, 1999 and Sept. 23, 1999).

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administration of the NANP has occurred or will occur during the pendency of this proceeding.

Similarly, Mitretek's argument that the proposed sale of CIS to NeuStar somehow violates the Commission's authority to appoint the NANPA,<sup>9</sup> and that the Commission should appoint Mitretek as NANPA in CIS's place, is without basis.<sup>10</sup> It is simply illogical to suggest that by approving a transaction in which CIS will continue to serve as NANPA, the Commission somehow will undo its decision to *appoint* CIS as NANPA.<sup>11</sup> It is equally illogical to suggest that, by requesting consent to this transaction, the Parties are usurping the Commission's power to determine what entity will be the NANPA. In fact, the Commission's process would be undermined by *accepting* Mitretek's proposal and appointing, in CIS's place, an entity that the Commission already has determined to be less qualified to fulfill the NANPA's responsibilities.<sup>12</sup>

### III. The Parties' Proposal Will Ensure The NANPA's Neutrality

Mitretek repeats its claim that the NeuStar Chief Executive Officer, the Chairman of NeuStar's board, the independent directors and the trustees of the voting trust will not be independent of Warburg Pincus; and that the independent directors and trustees, in particular, will be obligated to favor the interests of Warburg Pincus. As the Parties previously have explained, the directors will owe fiduciary duties to NeuStar and all of its shareholders and the trustees will owe fiduciary duties to all of the beneficiaries of the shares held in trust. Such fiduciary duties are owed to shareholders solely in their capacity as NeuStar shareholders, which requires the directors and trustees to ensure the success of NeuStar - not of Warburg Pincus or any other, non-NeuStar interest that the

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<sup>9</sup> Mitretek Reply at 7

<sup>10</sup> *Id.* at 8-9.

<sup>11</sup> The Parties acknowledge, of course, that the Commission is empowered both to appoint the NANPA and to approve a transaction in which ownership of the NANPA is transferred from one entity to another. The purpose of this proceeding is to obtain that approval. There is no authority, however, for Mitretek's claim that the NANPA function cannot be transferred to a new entity and that when such a proposal is made, the Commission's only recourse is to appoint a different NANPA altogether.

<sup>12</sup> Mitretek's claim that there has not been sufficient scrutiny of this transaction and Warburg Pincus is similarly misplaced. *Id.* at 8. This transaction has been the subject of careful review by the NANC, the LNP LLCs and individual industry participants, all of which have found that it will not disrupt numbering administration and that NeuStar will be financially and technically capable of performing NANPA and LNPA functions.

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shareholders may have. And NeuStar, in turn, cannot succeed as a company unless it remains completely neutral under Section 52.12(a)(1) of the Commission's rules, because failure to comply with those rules would result in its termination as NANPA and LNPA.

Neither Mitretek's Comments nor its Reply Comments make a credible challenge to the independence of the directors and trustees; nor does Mitretek address the Parties' demonstration that NeuStar will not be subject to "undue influence" under Section 52.12(a)(1)(iii) of the Commission's rules. Accordingly, Mitretek's objections to the structure of CIS's proposed ownership must be rejected.

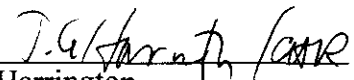
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### Conclusion

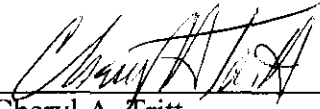
The Parties' Request to transfer CIS to NeuStar has been pending for nine months and has earned the approval of the North American Numbering Council, commenters representing the local exchange industry, the wireless industry, most of the long distance industry, state regulatory interests and the U.S. Chamber of Commerce. Only Mitretek opposes the Request, and that opposition is based upon illogical arguments, factual misstatements and misreadings of the law and this Commission's rules. Mitretek's opposition should be rejected and the Request should be approved without further delay.

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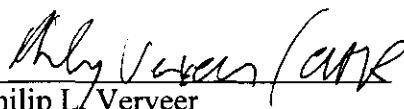
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## CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing **Written Ex Parte Communication** was served on this 28<sup>th</sup> day of September, 1999, to the following by first-class mail, postage prepaid or by hand delivery:

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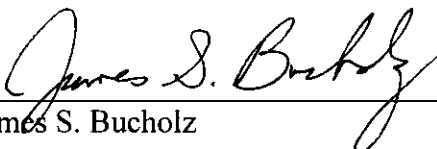
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